

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-100

In the Matter of

Amendment of Section 73.202(b).
Table of Allotments,
FM Broadcast Stations.
(Cleveland and Ebenezer,
Mississippi)

RM-8175

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 10, 1993; Released: December 13, 1993

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 2739 (1993), proposing the substitution of Channel 280C3 for Channel 280A at Cleveland, Mississippi, and deletion of Channel 280A at Ebenezer, Mississippi. The *Notice* was issued in response to a petition filed jointly by Radio Cleveland, Inc. ("Radio Cleveland") and James L. Haffey d/b/a JimBar Enterprises ("JimBar"). Radio Cleveland filed comments. Afro-American Broadcasters of Mississippi ("Afro-American Broadcasters") filed comments and an expression of interest for the channel at Ebenezer. Radio Cleveland filed reply comments.

2. As stated in the *Notice*, Channel 280C3 can be allotted to Cleveland provided Channel 280A at Ebenezer is deleted.¹ The *Notice* pointed out, JimBar, permittee of Channel 280A at Ebenezer, requested cancellation of its construction permit for Channel 280A and deletion of the channel. Additionally, the *Notice* stated that in support of this request, JimBar had stated that it determined that Ebenezer, an unincorporated community with a 1984 estimated population of 150, could not feasibly support an FM station in light of current economic conditions.² The *Notice* stated that Channel 280A at Ebenezer would be deleted unless comments were filed during the comment cycle in this proceeding stating an intention to file an application for the channel. The *Notice* also stated that should an expression of interest be filed for Channel 280A at Ebenezer, upon termination of this proceeding, a filing

window would be opened. Further, should the channel be retained, caution was expressed in the *Notice* that should it appear that there is undue delay in activating the channel in Ebenezer, the Commission would consider a further petition to remove the channel at Ebenezer to accommodate expanded service at Cleveland.

3. Afro-American Broadcasters filed comments requesting retention of Channel 280A in Ebenezer stating its intention to file an application for the channel. Afro-American Broadcasters states that Ebenezer is located just off Interstate Highway 55, a major north-south traffic route. Afro-American Broadcasters does acknowledge that Ebenezer is a small community but contends that a radio station operating in Ebenezer could also serve the nearby communities of Goodman, Durant and Vaughn, Mississippi.³

4. Radio Cleveland, in its reply comments, continues to support the proposed upgrade at Cleveland. Radio Cleveland argues that Ebenezer no longer qualifies as a community for allotment purposes and Channel 280A at Ebenezer should be deleted. Radio Cleveland reiterates that JimBar, the original petitioner for the channel at Ebenezer, requested cancellation of its construction permit after it determined that Ebenezer could not support an FM radio station. According to Radio Cleveland, Ebenezer is essentially becoming a "ghost town" with a population of 100 people as shown in the 1992 *Rand McNally Commercial Atlas* which is a decrease from the population of 150 people as was listed in the 1987 *Atlas*. Radio Cleveland points out that Ebenezer is not listed in the U.S. Census and that it is neither incorporated nor a Census Designated Place. Further, Ebenezer has no local government, school system or local newspaper, all things which would support its status as a community. Ebenezer only has a handful of local business and churches, which, states Radio Cleveland, may in fact serve the wider surrounding rural area. Radio Cleveland does not dispute that Ebenezer does have some of the attributes of a community such as a post office, its own zip code, volunteer fire department and water association but argues that it is not uncommon for sparsely populated rural areas to have such organizations. Radio Cleveland contends that the choice between retention of a channel in Ebenezer or the significant improvement of service at the much larger community of Cleveland compels the deletion of the Ebenezer allotment. Radio Cleveland asserts that Station WCLD-FM, Cleveland, presently serves 40,482 people while the requested upgrade would provide service to 76,687 people, virtually doubling the number of people served. The Ebenezer Class A station, on the other hand, would provide new service to 25,128 people. Radio Cleveland points out that Channel 280A at Ebenezer is short spaced to Station WCLD-FM, Cleveland, as a six kilowatt facility. Thus, the Ebenezer channel would be limited to an effective radiated power of three kilowatts. According to Radio Cleveland, granting the WCLD-FM

¹ On January 7, 1993, JimBar Enterprises filed a letter with the Commission requesting cancellation of the construction permit for Station WZBR-FM, Ebenezer, Mississippi (BPH-900424ME, BMPH-92011610). The Commission granted JimBar's request on March 23, 1993.

² Channel 280A was allotted to Ebenezer in MM Docket No. 89-324. See 5 FCC Rcd 682 (1990). The *Notice* in that proceeding requested JimBar Enterprises ("petitioner"), to provide information to support a finding that Ebenezer qualifies as a community for allotment purposes. Although petitioner provided minimal information, Ebenezer was found to be an iden-

tifiable population grouping with businesses and community organizations, including a post office and zip code, which identified with the community.

³ Goodman (population 1,256 people) and Durant (population 2,838) have a post office, zip code, bank and both communities are incorporated. The populations are taken from the 1990 U.S. Census. We note that there is a proposal in MM Docket No. 92-157 to allot Channel 266A to Durant, Mississippi. Although Vaughn is shown on a map of Mississippi in the 1993 *Rand McNally Commercial Road Atlas*, it is not listed in the 1990 U.S. Census.

upgrade and deleting the vacant Ebenezer channel would be fully consistent with recent pronouncements by the Commission regarding the need to take into account the economic plight of smaller market radio stations such as WCLD-FM. Further, maintaining the vacant Ebenezer channel would simply weaken the financial viability of other stations in its area, as well as Station WCLD-FM. Radio Cleveland states that its proposal to upgrade Station WCLD-FM will strengthen an existing broadcast service that is currently serving its area well and at the same time eliminate a channel that probably will never be financially viable.

5. Radio Cleveland also argues that the expression of interest of Afro-American Broadcasters should not be credited as there is no indication as to whether this is an individual or a corporation and if it is qualified to file an application for the vacant Ebenezer channel. Radio Cleveland further argues that without identification or additional information, there is no way to determine if the expression of interest is sincere or simply intended to block improved service by Station WCLD-FM.

6. We find that Ebenezer no longer qualifies as a "community" for allotment purposes. Although an interest was expressed in retaining the channel, no contrary evidence was presented to establish that Ebenezer is a community for allotment purposes. Therefore, we will not retain the channel based on our determination that Ebenezer no longer qualifies as a community. Afro-American Broadcasters' response to the *Notice* consisted of a simple expression of interest in the channel which indicated that it would file an application for the channel.⁴ Afro-American Broadcasters did not address the discussion in the *Notice* concerning JimBar's reasons for deletion of the channel at Ebenezer, although given an opportunity to do so in its comments, and therefore neglected to provide any showing that supports retention of the channel.⁵ Therefore, we will delete Channel 280A at Ebenezer. See *Penacook, New Hampshire*, 2 FCC Rcd 459 (1987); *Flora and Kings, Mississippi and Newellton, Louisiana*, 7 FCC Rcd 5477 (1992); *Searles Valley, California*, 3 FCC Rcd 5221 (1988) and *Garden City, Indiana*, 6 FCC Rcd 3747 (1991). Pursuant to Section 307(b) of the Communications Act, FM channels are allocated to specific communities. In the Declaratory Ruling Concerning the Meaning and Effect of Section 73.642(a)(3), 55 FCC 2d 187, 189 (1975), the Commission held that: "Although broadly speaking, a community consists of an identifiable population grouping with common local interests, there is no hard and fast rule to apply in deciding whether a particular population grouping constitutes a community and all relevant facts in each case must be weighed. Incorporation is not a prerequisite, and while a community need not have a clearly delineated area and population, it is no doubt correct to state that in most cases a community is a city, town, village or other political subdivision," citing *Mercer Broadcasting Co.*, 22 FCC 1009 (1957); *Musical Heights, Inc.*, 37 FCC Rcd 82 (1964); *Holston Broadcasting Corp.*, 1 R.R. 2d 982 (1964); and

Hymen Lake, 46 FCC 2d 560 (1974). Ebenezer is not incorporated or listed in the 1990 U.S. Census. The 1993 *Rand McNally Commercial Atlas* estimates Ebenezer's population at 100. However, mere geographical location is not sufficient to establish "community" status. See *Vimville, Mississippi*, 48 FR 5974 (1983). We note that Ebenezer has a post office and a zip code. However, the presence of a post office and a zip code is not sufficient to establish community status. See *Coker, Alabama*, 43 RR 2d 190 (1978). In this case, Ebenezer has several of the attributes normally associated with a community and on that basis was allotted an FM channel. However, the only permittee for the channel has since requested dismissal of the construction permit and deletion of the channel after determining the community could not support an FM station in light of current economic conditions and Ebenezer's declining population.

7. In response to Radio Cleveland's concerns over economic plight of smaller market radio stations, we note that the Commission recognizes the increased competition and economic hardships among stations in radio markets. However, in light of the outcome herein, there is no need to address this issue. See *FM Channel Assignments; Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), aff'd 4 FCC Rcd 2276 (1989). With respect to Radio Cleveland's allegation that the expression of interest filed by Afro-American Broadcasters could have been filed merely to block the requested upgrade by Station WCLD-FM, Radio Cleveland failed to provide proof of this allegation. Furthermore, Radio Cleveland also failed to show that the inability to identify Afro-American Broadcasters as an individual or corporation would establish a lack of good faith on the part of Afro-American Broadcasters. Accordingly, and in light of the outcome herein, we see no reason to address this issue further at this time.

8. After consideration of the information filed in this proceeding, we believe the public interest would be served by the substitution of Channel 280C3 for Channel 280A at Cleveland, Mississippi, and deletion of vacant Channel 280A at Ebenezer, Mississippi.⁶ In accordance with Section 1.420(g) of the Commission's Rules, we will modify the license for Station WCLD-FM, Channel 280A, Cleveland, Mississippi, to specify operation on Channel 280C3.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 27, 1994, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

⁴ Afro-American Broadcasters indicates that the communities of Goodman, Durant and Vaughn, Mississippi, would also be served by an allotment at Ebenezer. We note, however, that a licensee's primary obligation is to serve the needs and interests of the community to which it is licensed. See *Ludlow, California*, 4 FCC Rcd 6883 (1988) and Section 73.1120 of the Commission's Rules.

⁵ It is always in the commenters' best interest to present the

Commission with supporting evidence during the rule making process, especially in cases where, as here, the area in question is neither incorporated nor recognized by the U.S. Census. Timely disclosure ensures that all information will be considered in the deliberations before an allotment is made or deleted.

⁶ The coordinates for Channel 280C3 at Cleveland are 33-43-59 and 90-41-38.

Community	Channel No.
Cleveland, Mississippi	224A, 252C3, 280C3 ⁷
Ebenezer, Mississippi	----

10. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WCLD-FM, Cleveland, Mississippi, IS MODIFIED to specify operation on Channel 280C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Radio Cleveland, Inc., licensee of Station WCLD-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
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⁷ Larry G. Fuss has proposed the substitution of Channel 225C2 for Channel 224A in MM Docket 92-157. See 7 FCC Rcd

4840 (1992).